

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Yigal Bejerano, *et al.*
Serial No.: 10/672,204
Filed: September 26, 2003
Title: SYSTEM AND METHOD FOR MONITORING LINK DELAYS AND
FAULTS IN AN IP NETWORK
Grp./A.U.: 2113
Examiner: Matthew T. Urick Confirmation No.: 8936

Commissioner for Patents
P.O. Box 1450
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I hereby certify that this correspondence is being filed electronically with the United States Patent and trademark Office.	
on: <u>January 23, 2007</u>	(Date)
<u>Karen Vertz</u>	
(Printed or typed name of person signing the certificate)	
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(Signature of the person signing the certificate)	

Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The Applicants have carefully considered this Application in connection with the Examiner's Final Rejection mailed November 27, 2006, and respectfully request a pre-appeal brief review of this Application in view of the following remarks.

REMARKS/ARGUMENTS

The Applicant originally submitted Claims 1-19 in the application. In a previous response, the Applicant amended Claims 1, 6-8 and 13-14. Accordingly, Claims 1-19 are currently pending in the Application.

The Applicant submitted with the previous Amendment, the document "Cisco BTS 10200 Softswitch Operations and Maintenance Guide [Release 4.5], Chapter 17: SNMP Interface", ("Cisco"), for entry into the record via Form 1449. Although placed in the file, the Examiner refused to enter this submission into the record, stating "the information disclosure statement filed 11/7/06 fails to comply with 37 CFR 1.97(c) because it lacks a statement as specified in 37 CFR 1.97(e)." (Examiner's Action, page 2). The Applicants therefore do submit the required statement for the above document and request that the above document be entered into the record.

The Examiner also states that "the information disclosure statement filed 11/07/06 fails to comply with 37 CFR 1.97(c) because it lacks the fee set forth in 37 CFR 1.17(p)." (Examiner's Action, page 2.) The Applicants respectfully disagree, as denoted on the fee withdrawal from the Hitt Gaines, P.C.'s deposit account, 08-2395, as evinced by an entry of November 7, 2006, denoted by the posting reference number of 10672204 and the sequence number of 2638 for the sum of \$180.00. The Applicants therefore hereby request that the above document be entered into the record.

I. Rejection of Claims 1-4 and 8-11 under 35 U.S.C. §103

The Examiner has rejected Claims 1-4 and 8-11 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2002/0143914 to Cihula in view of Mauro. Additionally, dependent Claims 5 and 12 have been rejected as being unpatentable over Cihula in view of Mauro in further view of Perlman.

The Applicant respectfully disagrees with the Examiner's rejections. Claim 1 is directed to a system for monitoring link delays and faults in an IP network. The invention of Claim 1 includes a probe message identifier, coupled to a monitoring station identifier that computes a set of probe messages to be transmitted by at least ones of a set of monitoring stations such that delays and faults *in specific links spanning the set of monitoring stations* can be determined. (Emphasis added). Cihula is directed to a network-aware policy deployment that uses dynamic information, such as topology, congestion, link bandwidth, error rates, and the like, to purportedly intelligently deploy a policy.

The Examiner states:

SNMP contains means for polling remote devices and network connections for traffic

problems and other issues (Mauro: "Polling and Thresholds" (§1). A poll message is sent to a device, and the device replies with management information, which is collected and examined for compliance with thresholds. Mauro discloses that this polling can detect capacity issues as well as faults in specific connections (interfaces) (Mauro §1 lines 2-4). (Examiner's Action, page 3).

The first paragraph ("§1") of Mauro states:

SNMP gives you the ability to poll your devices regularly, collecting their management information. Furthermore, you can tell the NMS that there are certain thresholds that, if crossed, require some sort of action. ... When such a condition occurs, the NMS can forward an alarm to an event-correlation engine or have an icon or an OpenView map flash. To make this more concrete, let's say that the NMS is polling the status of an interface on a router. If the interface goes down, the NMS reports what has happened so the problem can be quickly resolved.

The Applicants respectfully disagree with the Examiner, and respectfully state that an "interface" of Mauro is not a "specific link" of the invention of Claim 1. For example, in the reference "Cisco BTS 10200 Softswitch Operations and Maintenance Guide [Release 4.5], Chapter 17: SNMP Interface", ("Cisco"), {which is submitted to the U.S.P.T.O in a Supplemental Information Disclosure Statement, Form 1449, and filed concurrently herewith}, the SNMP Interfaces are denoted as allowing communications between an Element Management System ("EMS") and a service provider's Network Management System ("NMS"). The EMS sends SNMP traps to the NMS, and the NMS can query the EMS for specific data elements. To help enable this communication, concerning SNMP Agent functions, which are associated with the EMS, there is detailed a list of collection of statistics and traffic management data functions, status and control functions, SNMP trap reports, and so on.

The SNMP Interfaces are not "specific links spanning said set of monitoring stations" as claimed in independent Claim 1. For instance, as is illustrated in FIG. 4C and 4D of the present Application:

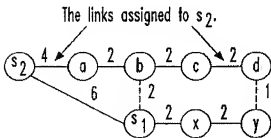


FIG. 4(c) The RT T s2 of node s 2.
(a,b) fails.

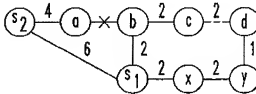


FIG. 4(d) The RTS T si and Ts2 when link
(a,b) fails.

The present invention of Claim 1 is directed towards monitoring *specific links* that span a set of monitoring stations. The specific links of the present invention of Claim 1 are simply not the interfaces of Mauro.

Furthermore, regarding dependent Claim 3, the Examiner has characterized Mauro (¶7-¶8) as standing for the proposition that “the user may specify the poll interval, taking into account such factors as bandwidth restrictions and importance of the components being polled, so user decides the minimal set of polling messages.” (Examiner’s Action, page 4).

The Applicants respectfully disagree with the Examiner. The Applicants respectfully state that the Examiner is effectively making an inherency argument, as the Examiner appears to be stating that because an element may be present, that element is present for purposes of an anticipation or obviousness determination. However, according to the M.P.E.P. 2112 (IV), “Examiner Must Provide Rationale or Evidence Tending to Show Inherency: The fact that a certain result or characteristic may (Emphasis in *M.P.E.P.*) occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic... ‘In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily (Emphasis again in *M.P.E.P.*) flows from the teachings of the applied prior art.”

The Applicants hereby challenge the conclusion of the factual assertion that “the user may specify the poll interval, taking into account such factors as bandwidth restrictions and importance of the components being polled, so user decides the minimal set of polling messages.”

Furthermore, according to the M.P.E.P. 2144.03(C), “If Applicant challenges a Factual Assertion as Not Properly Officially Noticed or not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding With Adequate Evidence: To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner’s action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.”

The Applicants state that a user deciding a minimal set of polling messages could be a computationally intensive process, especially given the higher level of abstraction in SNMP and in SNMP Interfaces. Therefore, the Applicants do not consider this noticed fact to be common knowledge or well known in the art. Also, for analogous reasons, the Applicants do not consider the noticed fact of dependent Claim 9 to be common knowledge or well known in the art as well.

According to the M.P.E.P. 2144.04 (C), “If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth

the record under the "substantial evidence" standard under the Administrative Procedure Act for the conclusion of the factual assertion that "the user may specify the poll interval, taking into account such factors as bandwidth restrictions and importance of the components being polled, so user decides the minimal set of polling messages. Alternatively, the Applicants request that the Examiner provide an affidavit or declaration setting forth specific factual statements and explanations to support the finding, or withdraw the rejection of Claim 3.

In the Response to Arguments, on page 9-10 of the Examiner's Action, the Examiner states, regarding Mauro ¶1: "'For example, you might want to be notified if the traffic at interface jumps to an extremely high (or low) value; that event might signal a problem with the interface, or insufficient capacity, or even a hostile attack on your network.' This discloses that the polling system is capable of detecting faults or capacity issues at specific links (interfaces) in a network." (Examiner's Action, page 10). The Applicants respectfully disagree. As discussed above, the interfaces of Mauro are simply not the links of the present invention of Claim 1, nor of dependent Claim 3.

II. Conclusion

In view of the foregoing remarks, the Applicant sees all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicits a Notice of Allowance for Claims 1-19.

The Applicant requests the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application.

Respectfully submitted,

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